

Internal Revenue Service

District
Director

Department of the Treasury

401 W. Peachtree St. NW.
Atlanta, GA 30365

Person to Contact:

Contact Telephone Number:

Date: JUL 11 1994

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Dear Applicant:

We have considered your application for recognition of exemption from federal income tax as an organization described in section 501(c)(4) of the Internal Revenue Code. For the reasons stated below, we have concluded that you do not qualify for exemption under this section. Your protest rights are also explained below.

You were incorporated on [REDACTED] in the state of [REDACTED]. Your purpose, as stated in your articles of incorporation, is "...to provide for maintenance, preservation and architectural control of the residence Lots and Common Area... and to promote the health, safety, and welfare of the residents..." Membership in your organization is restricted to property owners or home owners in [REDACTED].

In your exemption application and documents and correspondence submitted during the application process, you indicate that your activities have included maintaining the grass along the right of way along a public street and paying for the watering of trees along city streets. You also have sent letters to homeowners in the subdivision who were violating restrictive covenants and you require that all homeowners in the area ask for permission from you before making any additions or alterations to their homes to make sure that the property values of all residents will be preserved. You have the right to enforce all restrictive covenants by legal means.

[REDACTED] is a subdivision adjacent to other subdivisions, consisting in total of [REDACTED] units; however, Unit [REDACTED] consists of [REDACTED] units. The major portion of Unit [REDACTED] can only be entered through one street and the design of the area, even though not physically barring access to the public, is designed to restrict access because most of the streets end in cul-de-sacs which do not encourage traffic through the area. In addition, the area does not contain any public parklands, public recreational facilities, or similar inducements for public use of the streets.

You receive income from membership dues and assessments. Funds are used primarily to compensate persons who provide landscaping services and for other administrative expenses.

Section 501(c)(4) of the Internal Revenue Code holds that civic leagues and organizations not organized for profit but operated exclusively for the promotion of social welfare are exempt from tax.

Section 1.501(c)(4)-1(a)(2)(i) of the Income Tax Regulations holds that an organization is a "social welfare" organization if it promotes the common good and general welfare of the people of a community.

Revenue Ruling 74-99, 1974-1 C.B. 131 which clarifies Revenue Ruling 72-102, provides that for a homeowners' association to qualify for exemption under section 501(c)(4) of the Code, it must, among other criteria: (1) serve a community bearing a reasonably recognizable relationship to an area ordinarily identified as a governmental subdivision or unit thereof, and (2) make common areas and facilities available for the use and enjoyment of the general public (persons other than members and their guests).

Revenue Ruling 80-63, 1980-1 C.B. 116 restates the conclusions of Revenue Ruling 74-99 and further indicates that a homeowners' association that represents an area that is not a community may not qualify for exemption where the benefits provided by the organization's activities are restricted to members.

Based on the information provided during your application, we conclude that the development represented by your organization is not a "community" within the meaning of section 1.501(c)(4)-1(a)(2)(i) of the Income Tax Regulations in that [REDACTED] does not bear a reasonably recognizable relationship to a governmental subdivision or unit thereof. Further, we conclude that your activities do not serve to provide any significant benefit to the residents of the entire [REDACTED] or [REDACTED]. While access to Unit [REDACTED] is not physically barred to nonresidents, the fact that most roads do not lead through Unit [REDACTED] to any other areas or public thoroughfares, and the fact that Unit [REDACTED] does not contain any public parklands, recreational facilities, or similar inducements for public use, is evidence that any public benefit provided by your organization is insubstantial compared with the private benefit accorded to your members. In addition, the fact that you enforce restrictive covenants also shows that you are mainly operated to preserve and enhance members' property values. Therefore, you are not promoting the common good and general welfare of the public.

Accordingly, based on all the facts and circumstances, we conclude that you do not qualify for recognition of exemption from federal income tax under section 501(c)(4) of the Code or under any other

subsection of section 501. You are therefore required to file federal income tax returns on Form 1120 or Form 1120-H if you decide to make the election available to homeowners' associations through section 528.

If you do not agree with our determination, you may request consideration of this matter by the Office of Regional Director of Appeals. To do this you should file a written appeal as explained in the enclosed Publication 892. Your appeal should give the facts, law, and any other information to support your position. If you want a hearing, please request it when you file your appeal and you will be contacted to arrange a date. The hearing may be held at the regional office, or, if you request, at any mutually convenient district office. If you will be represented by someone who is not one of your principal officers, that person will need to file a power of attorney or tax information authorization with us.

Sincerely yours,

District Director

Enclosure:
Publication 892